

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
H. W. BOCKELIE,)
)
Appellant,)
)
v.)
)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
)
Respondent.)

PCHB No. 794

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of a \$150 civil penalty for an
alleged open burning violation of respondent's Regulation I; having
come on regularly for hearing before the Pollution Control Hearings
Board; and appellant, H. W. Bockelie, not appearing and respondent,
Puget Sound Air Pollution Control Agency, appearing through Keith D.
McGoffin; and Board members present at the hearing being Walt Woodward
(presiding) and Chris Smith (Chairman) and the Board having considered
the sworn testimony, appellant's letter to the Board of January 24,
1975, exhibits, records and files herein and having entered on the


1 16th day of June, 1975, its proposed Findings of Fact, Conclusions of
2 Law and Order, and the Board having served said proposed Findings,
3 Conclusions and Order upon all parties herein by certified mail,
4 return receipt requested and twenty days having elapsed from said
5 service; and

6 The Board having received no exceptions to said proposed Findings,
7 Conclusions and Order; and the Board being fully advised in the
8 premises; now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions of Law and Order, dated the 16th day
11 of June, 1975, and incorporated by this reference herein and attached
12 hereto as Exhibit A, are adopted and hereby entered as the Board's
13 Final Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington this 17th day of July, 1975.

15 POLLUTION CONTROL HEARINGS BOARD

16 
17 CHRIS SMITH, Chairman

18 
19 WALT WOODWARD, Member

20
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24
25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

CERTIFICATION OF MAILING

I, LaRene Barlin, certify that I deposited in the United States mail, copies of the foregoing document on the 18th day of July, 1975, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. Henrik W. Bockelie
5240 Werner Road
Bremerton, Washington 98310

Mr. Keith D. McGoffin
Burkey, Marsico, Roval, McGoffin,
Turner and Mason
P. O. Box 5217
Tacoma, Washington 98405


LARENE BARLIN
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
H. W. BOCKELIE,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
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FINDINGS OF FACT,
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This matter, the appeal of a \$150 civil penalty for an alleged open burning violation of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Chris Smith, Chairman) at a formal hearing in the Tacoma facility of the State Board of Industrial Insurance Appeals on June 9, 1975.

Respondent appeared through Keith D. McGoffin; appellant did not appear but, through written notice to the Board, asked that the hearing be held in his absence, the Board to employ appellant's appeal notice of January 24, 1975 as appellant's testimony. Respondent and the Board agreed to proceed in this manner. Jennifer Rowland, Olympia court

EXHIBIT A

1 reporter, recorded the proceedings.

2 A witness was sworn and testified. Exhibits were admitted.

3 From testimony heard, appellant's letter to the Board of
4 January 24, 1975 considered and exhibits examined, the Pollution Control
5 Hearings Board makes these

6 FINDINGS OF FACT

7 I.

8 Respondent, pursuant to Section 5, chapter 69, Laws of 1974, 3d
9 Ex. Sess., has filed with this Board a certified copy of its Regulation
10 I containing respondent's regulations and amendments thereto.

11 II.

12 Section 9.02(b) (3) of respondent's Regulation I makes it unlawful
13 to cause or allow an outdoor fire containing ". . . asphalt . . . paints,
14 rubber products, plastics" Section 3.29 authorizes a civil
15 penalty of not more than \$250 for any violation of Regulation I.

16 III.

17 On December 30, 1974, on property owned by appellant at 5240 Werner
18 Road, Kitsap County (west of Bremerton), appellant burned an outdoor
19 fire eight feet in diameter and four to five feet high. The fire
20 contained Christmas trees, Christmas boxes, wood scraps, tree limbs and,
21 unknown to appellant, one or more cardboard boxes containing electrical
22 wire, a paint bucket, plastic sheeting and tarpaper. The fire emitted a
23 plume of black smoke visible for two miles.

24 IV.

25 The fire, observed by an inspector on respondent's staff, resulted
26 in appellant being served with Notice of Violation No. 7566 and

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

((

1 subsequently and in connection therewith, with Notice of Civil Penalty
2 No. 1882 in the sum of \$150, which is the subject of this appeal.

3 V.

4 Notice of Violation No. 7566 apparently is the first citation
5 issued by respondent to appellant.

6 VI.

7 Any Conclusion of Law hereinafter recited which is deemed to be a
8 Finding of Fact is adopted herewith as same.

9 From these Findings, the Pollution Control Hearings Board comes
10 to these

11 CONCLUSIONS OF LAW

12 I.

13 Appellant was in violation of Section 9.02 of respondent's
14 Regulation I as cited in Notice of Violation No. 7566. Lack of know-
15 ledge of the material being burned cannot absolve the violation.

16 II.

17 As to the reasonableness of Notice of Civil Penalty No. 1882, the
18 Board notes that this apparently is appellant's first violation of
19 Regulation I. The Board believes appellant's contention that he did not
20 know that certain cardboard boxes contained prohibited burning material.
21 Appellant was careless, but not deliberate in burning that pollution-
22 producing material. In view of these considerations, a portion of the
23 civil penalty should be suspended.

24 III.

25 Any Finding of Fact herein recited which is deemed to be a
26 Conclusion of Law is adopted herewith as same.

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

Therefore, the Board issues this

ORDER

The appeal is denied, the \$150 civil penalty is sustained, but payment of \$75 of that amount is suspended pending no similar violation for a period of six months from the date this Order becomes final.

DONE at Lacey, Washington this 16th day of June, 1975.

POLLUTION CONTROL HEARINGS BOARD

Chris Smith
CHRIS SMITH, Chairman

Walt Woodward
WALT WOODWARD, Member

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER